FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted]
[redacted]

DECISION

MOP/171156

PRELIMINARY RECITALS

Pursuant to a petition filed January 04, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a hearing was held on February 17, 2016, at Green Bay, Wisconsin.

The issue for determination is whether the agency met its burden to prove the petitioner's liability for a MA (QMB) overpayment of $1,061 as set forth in claims numbered [redacted], [redacted], and [redacted].

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]
c/o [redacted]
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: [redacted]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Brown County.

2. The Department issued MA overpayment notices to petitioner dated 12/24/15 reflecting MA overpayments from 9/1/11 to 1/31/12 ($561.50), 6/1/12 to 6/30/12 ($99.90), and 9/1/12 to 12/31/12 ($399.60).

3. Petitioner appealed.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

> *(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:*
>
> *1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.*
>
> *2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.*
>
> *3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.*

This case relates to the petitioner's enrollment in the MA program designated as QMB. Section 301 of the Medicare Catastrophic Coverage Act (MCCA) of 1988 established an eligibility category known as Qualified Medicare Beneficiary (QMB). A Qualified Medicare Beneficiary (QMB) is an individual with income below the poverty level whose Medicare premium benefits and coinsurance and deductibles are paid for by the state Medicaid (MA) program based upon the individual's poverty status (100% of the federal poverty level).

The Department asserts that petitioner applied for the QMB program and has been enrolled for years with the state paying Medicare premiums to the federal government for some periods when petitioner was ineligible due to income.

Petitioner's mother represented him at hearing and countered that she did visit the agency in 2011 to determine what benefits would be available but did not understand that any benefits were being granted. Over the years, petitioner's mother explained, petitioner has been covered by private insurance and has not received Medicare benefits. Indeed, petitioner offered an exhibit from the Social Security Administration relating to 2015 benefits which states that petitioner declined Medicare benefits and that there was no cost or premium related to Medicare.

In an overpayment matter, the burden is on the agency to establish that an overpayment was made. Furthermore, in medical assistance cases, only overpayments caused by client error are recoverable. If the error was caused by the agency or Department then the overpayment is not recoverable. Thus, it is also the burden of the agency to prove client error.

After consideration of the evidence in this case, it is not clear to me that the state was paying the federal government for any costs related to petitioner, or that any such possible costs were for Medicare premiums. The evidence in the record indicates that there was no Medicare coverage. If there was Medicare coverage and related premiums, there is no evidence to persuade me that petitioner was aware of payments by the state or that such payments were being made due to client error and not agency error. My best guess in this case is that if the state were paying the federal government on behalf of petitioner, these payments were not known by petitioner and not intended by petitioner. I find in entirely credible that petitioner was covered under private insurance and that there would be little to no reason for petitioner to enroll in QMB. The bottom line is that the agency failed to meet its burden as I still lack enough evidence to determine what happened in this case and why.

CONCLUSIONS OF LAW

The agency failed to meet its burden to prove the petitioner's liability for a MA (QMB) overpayment of $1,061 as set forth in claims numbered [redacted], [redacted], and [redacted].

THEREFORE, it is ORDERED

That this matter is remanded to the agency with direction to reverse the determination of overpayments in claims numbered [redacted], [redacted], and [redacted], to cease all collection efforts, and to return any funds already collected, if any. These actions must be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison, Wisconsin, this 8th day of March, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on March 8, 2016.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability